R.S.A. No.2309 of 2005(O&M)

Present: None for the appellants.

Mr.Avnish Mittal, Advocate,
for the respondents.

***

On request made by the learned counsel for the respondents, adjourned to 23.10.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A. No.2125 of 2005

Present: Mr.Arun Jain, Advocate
for the appellant.

***

On request made by the learned counsel for the appellant, adjourned to 19.10.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.77 of 2005(O&M)

Present: None for the appellant.

Mr.K.S.Sidhu, Advocate,
for the respondent.

***

On request made by the learned counsel for the respondent, adjourned to 10.10.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.3377 of 2004

Present: None.

***

On written request made by the learned counsel for the respondent, adjourned to 29.09.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.2521 of 2004

Present: None.

***

In the interest of justice, adjourned to 21.09.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.4683 of 2004

Present: None.

***

On written request made by the learned counsel for the appellant, adjourned to 29.09.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.4552 of 2004(O&M)

Present: Mr.Vikram Punia, Advocate
for the appellants.

***

Learned counsel for the appellants prays for time to inspect the records.

Adjourned to 29.09.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.3132 of 2004(O&M)

Present: Mr.Harkesh Manuja, Advocate
for the appellant.

***

On request made by the learned counsel for the appellant, adjourned to 29.09.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.3692 of 2004

Present: None.

***

On written request made by the learned counsel for the appellant, adjourned to 25.09.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.1787 of 2004

Present: None.

***

In the interest of justice, adjourned to 21.09.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

C.M.No.3587-C of 2004 in
R.S.A.No.1472 of 2004

Present: Mr.Rahul Vats, Advocate
for the appellants.

***

On request made by the learned counsel for the appellant, adjourned to 21.09.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.1468 of 2004

Present: None.

***

On written request made by the learned counsel for the respondents, adjourned to 28.09.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.1745 of 2005

Present: Mr.Harsh Aggarwal, Advocate
for the appellant.

***

On request made by the learned counsel for the appellant, adjourned to 17.10.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.1483 of 2005

Present: None for the appellant.

Mr.Sandeep Goyal, Advocate,
for the respondent.

***

On request made by the learned counsel for the respondent, adjourned to 18.09.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.1385 of 2005

Present: Mr.Arun Singla, Advocate
for the appellant.

Mr.Kamal Sharma, Advocate,
for respondents No.1 and 2.

***

On request made by the learned counsel for the appellant, adjourned to 16.10.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.706 of 2006(O&M)

Present: None for the appellants.

Mr.C.B.Goel, Advocate,
for the respondent.

***

On request made by the learned counsel for the respondent, adjourned to 26.10.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.F.A.No.505 of 2006(O&M)

Present: None for the appellants.

Mr.Raj Mohan Singh, Advocate,
for the respondent.

***

Office report shows that the respondent has been served.

Adjourned to 26.10.2006 for arguments.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.4364 of 2005

Present: None for the appellant.

Mr.Naveen Gupta, Advocate,
for the respondent.

***

On request made by the learned counsel for the respondent, adjourned to 24.10.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.4225 of 2005

Present: Mr.Sunil Chadha, Advocate
for the appellant.

***

On request made by the learned counsel for the appellant, adjourned to 24.10.2006 for arguments.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A. No.3624 of 2005

Present: Mr.Sandeep Punchhi, Advocate
for the appellant.

***

On request made by the learned counsel for the appellant, adjourned to 24.10.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.2548 of 2005(O&M)

Present: Mr.Sanjay Mittal, Advocate
for the appellant.

***

Office report shows that respondents have been served. Despite service, no one has appeared on their behalf. They are proceeded ex parte.

However, in the interest of justice, adjourned to 24.10.2006 for arguments.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

In RSA No.933 of 2006

Present: Mr.S.S.Dalal, Advocate
for the appellants.

***

Office report shows that the summons issued to the respondents have not been received back served or otherwise.

To await the report qua service.

List again on 26.10.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.1219 of 2004

Present: Mr.D.S.Chanan, Advocate
for the appellants.

***

The present appeal involves the validity of the Will alleged to have been executed by Zora Singh on 10.07.1992. It was held by the Supreme Court of India in a judgment reported as **Major Singh Vs. Rattan Singh(dead) by L.Rs. and Others J.T. 1997(1) S.C. 404** that the interpretation of Will is a substantial question of law.

Admitted.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.330 of 2005(O&M)

Present: Mr.Arvind Seth, Advocate for
Mr.Rakesh Gupta, Advocate.
for the appellant.

Mr.Rajesh Bansal, Advocate,
for the respondent.

***

Learned counsel for the appellant states that the appellant has since expired. He prays for time to bring the legal heirs of the deceased on record.

Adjourned to 09.10.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A.No.4786 of 2004

Present: None.

***

On 10th November, 2005, no one had put in appearance. On 04th July, 2006, the matter was adjourned on the request of the learned counsel for the appellant.

The case pertains to the year, 2004 and is still on the motion stage.

However, in the interest of justice, adjourned to 11.08.2006.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A. No.1277 of 2002

Present: Mr.Deepak Arora, Advocate
for the appellant.

Mr.D.D.Sharma, Advocate,
for the respondent.

***

Concededly, the parties are co-sharers and the suit was filed by the respondent for permanent injunction. It has been contended by the learned counsel for the appellant that Exhibit D-2, the document which has been totally ignored by the Courts below would have gone to show that the respondent was not in exclusive possession of the suit property.

The question of law as formulated in para No. 2 in the Grounds of Appeal which arises for the adjudication in the present appeal is as follows:-

> "Whether a co-sharer who has specifically sold the property more than his share would be again entitled to claim for his share in the joint property as a co-sharer?"

Admitted.

Status quo regarding possession shall be maintained.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A. No.2068 of 2003(O&M)

Present: Mr.A.K.Chopra, Sr.Advocate with
Mr.Harminder Singh, Advocate,
for the appellants.

Mr.Manish Bansal, Advocate for
Mr.H.S.Lalli, Advocate,
for the respondent.

***

Contends that there was a specific plea in the plaint that the appellants were in possession since 1968. This fact was not denied by the respondent in the written statement.

In view of this, it was contended that the possession was open and hostile to the knowledge of the respondent and that the appellants had become the owners of the suit property by way of adverse possession.

The questions of law as formulated in para No.12 (A,B & C) in the Grounds of Appeal which arises for adjudication in the present appeal are as follows:-

"A) Whether the plaintiffs/appellants have become owners over the suit property by way of adverse possession?

B) Whether the Ld. First Appellate Court has committed illegality by not providing opportunity to the appellants for leading additional evidence to bring on record khasra girdawaris earlier to the year 1974-75 by summoning the Revenue Patwari which was essential to settle the main issue of adverse possession?

C) Whether the Municipal Council which has stepped

into the shoes of the Gram Panchayat can deny the long possession of the appellants which has ripened into the ownership especially when no steps whatsoever were taken by the Gram Panchayat or the Nagar Council to take possession from Baljit Singh and thereafter from the appellants?

Admitted.

Status quo regarding possession shall be maintained.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No.444 of 2004

DATE OF DECISION:03.08.2006

Salamu Deen

...Appellant.

Versus

Smt.Umri and Others

...Respondents.

CORAM: HON'BLE MR. JUSTICE MAHESH GROVER.

PRESENT: Mr.Parminder Singh, Advocate
for the appellant..

MAHESH GROVER, J.

The appellant has filed the present appeal assailing the judgments and decrees of the Courts below. Briefly stated the facts of the case are that the appellant was a collateral of one Karam Alahi, who died about 30 years back and his widow Umri had succeeded to his estate. According to the case set up by the appellant, Smt.Umri could not have alienated the suit property which was alleged to have been done in favour of respondent No.2, since the property was ancestral and the parties were governed by the custom.

Respondent No.2 in whose favour, land had been alienated contended that he was the adopted son of Karam Alahi and that the alienation was proper and it will not be governed by the custom which was alleged by the appellant.

Learned counsel for the appellant has contended that since the parties were governed by the custom and were Muslims, the land being ancestral could not have been alienated by the widow and the same should

have reverted back to the collaterals.

I have heard learned counsel for the appellant and have perused the record.

The appellant has pleaded custom but has failed to establish on record as to whether the parties were governed by a particular custom or not. There is no evidence on record to suggest and substantiate the claim of the appellant. The custom varies from place to place and unless it is pleaded and established beyond doubt that the custom is prevalent, the appellant cannot take the benefit of the same. The appellant had challenged the decree in favour of respondent No.2 only on this basis and there is no evidence to establish custom.

There is no infirmity in the findings recorded by the Courts below. No substantial question of law arises in the present Regular Second Appeal and it being devoid of any merit is dismissed as such.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A. No.2575 of 2004

Present: None.

***

On 30th April, 2005, no one had put in appearance and the case was adjourned in the interest of justice.

Subsequently, no one has come present today.

Dismissed for want of prosecution.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A. No.2060 of 2005

Present: Mr.M.S.Lobana, Advocate
for the appellant.

Mr.R.S.Bajaj, Advocate,
for respondents No.1,2 and 4.

***

Learned counsel for the respondents states that respondents No.5,7 and 8 are proceeded ex parte in the proceedings below and it is not necessary to serve them for the motion hearing.

Adjourned to 19.10.2006 for arguments.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A. No.2031 of 2005(O&M)

Present: None for the appellant.

Mr.Yogesh Chaudhary, Advocate,
for respondents No.1 to 3.

***

On request of the learned counsel for respondents No.1 to 3, adjourned to 22.09.2006.

In the meantime, status quo regarding possession shall be maintained.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A. No.2286 of 2005

Present: Mr.Pritam Saini, Advoacte,
for the appellant.

Mr.Yesh Paul Malik, Advocate,
for respondents No.1 to 10.

***

Service is complete.

Adjourned to 23.10.2006 for arguments.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

R.S.A. No.1289 of 2005

Present: Mr.Ashish Aggarwal, Advocate
for the appellants.

***

Contends that the appellants are in possession of 52 kanals 4 marlas and, therefore, are entitled to an injunction on this account.

Notice of motion for 16.10.2006.

Status quo regarding possession shall be maintained.

August 03, 2006 (MAHESH GROVER)
seema JUDGE

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No.5461 of 2003

DATE OF DECISION: 03.08.2006

Rachhpal Singh and Others

...Appellants.

Versus

Narinder Kaur and Others

...Respondents.

CORAM: HON'BLE MR. JUSTICE MAHESH GROVER.

PRESENT: Mr.Vikas Bahl, Advocate,
for the appellants.

Mr.R.K.Joshi, Advocate,
for the respondents.

***

MAHESH GROVER, J.

This is a Regular Second Appeal filed by the appellants assailing the judgment of the learned trial Court dated 23.02.2000 and that of the learned lower appellate Court dated 17.10.2003.

Briefly stated the facts of the case are that the appellants filed a suit for possession of the land, the details of which were given in the plaint and also prayed that the relief of permanent injunction be granted to them restraining the respondents from alienating the suit property in any manner. According to the averments made in the suit, the respondents were originally owners of the suit land which was sold to the appellants vide sale deed dated 29.12.1989 for a consideration of Rs.50,000/- and sale deed dated 15.07.1991 for a consideration of Rs.29,000/-. The

possession of the suit land was given to the appellants and they remained in possession of this property ever since the date of its purchase. One Gian Singh son of Mulla Singh and Harbans Singh filed a civil suit bearing No.106 of 1985, for possession by way of specific performance of agreement to sell, which was alleged to have been executed by the respondents in their favour. The subject matter of this agreement to sell was the same as that of the present suit property. This suit was decreed on 13.02.1990. It was the case of the appellants that they were not a party to those proceedings. In pursuance to the decree which was passed by the Court of competent jurisdiction in civil suit No.106 of 1985 decreed on 13.02.1990 in favour of Gian Singh, the possession of the suit property was taken on 12.05.1995 from the appellants in execution proceedings. It was in this background that the appellants filed the present suit to say that the possession of the suit property be delivered to them as they were the owners by virtue of the sale deeds in their favour. Relief of permanent injunction was also sought seeking to restrain the respondents from alienating the suit property.

The respondents did not deny the execution of the sale deeds in favour of appellants but said that it was at their own risk and responsibility. It was further stated that the sale deeds were without consideration and subject to the decision of the pending litigation with Gian Singh. It was admitted that a decree for possession in favour of Gian Singh and Harbans Singh had been passed and hence the sale in favour of appellants was bad.

From the pleadings of the parties, the following issues were framed by the learned trial Court, which are as follows:-

"1. Whether the plaintiffs are entitled to the possession of

the suit land? OPP

2. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP
3. Whether the plaintiffs are entitled to any other relief in the alternative? OPP
4. Whether the suit is within limitation? OPP
5. Whether the suit is barred under the principle of res judicata and under Order 2 Rule 2 CPC? OPD
6. Relief".

After perusing the evidence on record, the learned trial Court went on to dismiss the suit of the appellants with costs and in an appeal, the findings of the learned trial Court were affirmed, which has resulted in the filing of the present appeal by the appellants.

It was contended by Sh.Vikas Bahl, learned counsel for the appellants that the execution of the sale deeds have not been denied. They were registered sale deeds and, therefore, the presumption of truth was attached to them. There was a stipulation regarding the amount of Rs.50,000/- and Rs.29,000/- having been paid in the sale deeds itself and, therefore, it cannot be said that the sale deeds were without consideration. He further contended that even if it is assumed for the sake of argument that the sale in favour of the appellants was bad because of the prior agreement to sell in favour of Gian Singh and Harbans Singh then also the Courts below should have considered the lesser relief of compensating the appellants by directing the refund of the amount which has been paid to the respondents. The right to recover the amount would still sustain.

On the other hand, learned counsel for the respondents has

contended that there were no pleadings to that effect which would warrant the refund of the amount to the appellants and also contended that the sale in favour of the appellants was hit by the principle of lis pendens.

I have heard learned counsel for the parties and have also perused the record.

Concededly, on facts, an agreement to sell was in existence prior to the execution of sale deeds in favour of the present appellants. The agreement to sell was not honoured by the respondents and a suit for specific performance was pending when the sale deeds in favour of the appellants were executed. The appellants were aware of the pendency of this suit. The fact has been admitted by the appellant No.1 in his testimony. They are thus certainly not bona fide purchasers of the suit property. The execution of the subsequent sale deeds is, therefore, certainly hit by the principle of lis pendens. The sale would therefore be bad in the eyes of law.

The respondents have not denied the execution of the sale deeds in favour of the appellants but have said it was at their own risk and responsibility and have also pleaded that it was not for any consideration. The factum of the sale having been admitted by the respondents, it does not lie in their mouth to say that the sale was without consideration, for the simple reason that the possession of the suit property had concededly been delivered to the appellants at the time of execution of sale deeds. This means that the sale deeds were executed and acted upon and the possession stood delivered to the appellants.

In view of this overwhelming evidence, when there is admission regarding the execution of the sale deeds in favour of the appellants, the Courts below were wrong in questioning the validity of the

sale deeds. The sale certainly was hit by the principle of lis pendens but there is no denial to the fact that the sale deeds in favour of the appellants had been executed and acted upon when possession was delivered. Had there been no prior litigation then the rights of the appellants could not have been defeated. It is obviously the result of the fraudulent actions of the respondents that the appellants have been deprived of the benefits of the sale deeds in their favour.

A perusal of the sale deeds does not show that the appellants were ever made aware of the existence of any agreement qua the suit property or that it was purely at the risk of the appellants. The respondents, therefore, cannot evade their liability in entirety. The sale deeds had been admitted and even otherwise according to Section 91 of the Indian Evidence Act, no oral evidence could be looked into except the document itself since the same pertained to the dispossession of the property.

Section 91 of the Indian Evidence Act is reproduced below:-

> **"91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of documents:-** When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained".

In view of these circumstances, even though the relief of possession could not be granted to the appellants but still the Courts were

not precluded from considering the relief of the refund of the amount which is said to have been paid to the respondents at the time of execution of the sale deeds. The terms of the sale deeds stood proved in which there was a stipulation about payment of sale consideration and, therefore, there was no escape from the conclusion that the money had changed hands. The findings of the Courts below that they were without consideration are erroneous.

The appellants had every right to recover the amount even if it is presumed that they had knowledge of the earlier litigation. In a case reported as **Shahu Avadesh Kumar and others vs. S.Zakaul Husnain and others AIR(31) 1944 Allahabad 243** , it was observed:-

> "The right which is given to the vendee by the warranty of title express or implied to bring a suit for refund of sale-consideration remains even if the vendee had knowledge of the defective title of his vendor: (32) 19 AIR 1932 All. 546, Rel. on."

The learned lower appellate Court had declined the relief on the ground that there were no pleadings to that effect. I am afraid that this observation of the learned lower appellate Court cannot be sustained. The Courts are well within their jurisdiction to grant lesser relief even it has not been prayed if the circumstances so warrants.

The Supreme Court in **Firm Sriniwas Ram Kumar vs. Mahabir Prasad and others AIR 1951 SC 177** has observed as follows:-

> "A pltf. may rely upon different rights alternatively and there is nothing in the Civil P.C. to prevent a party from making two or more inconsistent sets of allegations and

claiming relief thereunder in the alternative. The question, however, arises whether, in the absence of any such alternative case in the plaint it is open to the Ct. to give him relief on that basis. The rule undoubtedly is that the Ct. cannot grant relief to the pltf. on a case for which there was no foundation in the pleading and which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the pltf. could have made, was not only admitted by the deft. in his written statement but was expressly put forward as an answer to the claim which the pltf. made in the suit, there would be nothing improper in giving the pltf. a decree upon the case which the deft. himself makes. A demand of the pltf. based on the deft's own plea cannot possibly be regarded with surprise by the latter and no question of adducing evidence on these facts would arise when they were expressly admitted by the deft. in his pleadings. In such circumstances when no injustice can possibly result to the deft., it may not be proper to drive the pltf. to file a separate suit."

The Courts below were wrong in denying this relief to the appellants. The substantial question of law which arises in the present case is "whether a relief which has not been claimed or pleaded by the appellants in their plaint can be denied to them, if it constitutes a lesser relief in the circumstances of the case".

The answer to the aforesaid question has been

given by the Apex Court in **Firm Sriniwas Ram Kumar's case (supra).**

For the foregoing reasons, the present appeal is partly allowed and the judgments and decrees of the Courts below are modified set aside and it is held that the appellants shall be entitled to the refund of the amount which was passed on to the respondents by way of sale consideration pursuant to the sale deeds dated 29.12.1989 and 15.07.1991 along with interest @ 9% per annum from the date of filing of the suit till the date of realization.

The appeal is partly allowed and disposed of in the aforesaid terms.

August 03, 2006 (MAHESH GROVER)
seema JUDGE